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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

CHARLES E. MOORMAN and EARLINE B. MOORMAN,
His Wife,
Petitioners,

vs.

WILLIAM T. THOMAS, OLIVE R. THOMAS, and
WILLIAM T. THOMAS, JR.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Come now the Respondents, William T. Thomas, Olive R. Thomas, and William T. Thomas, Jr., by and through their undersigned attorneys and submit this brief in opposition to the Petitioners' request for Writ of Certiorari directed to the Supreme Court of Florida.

STATEMENT OF THE FACTS

The Respondents adopt for the purposes of this brief the statement of facts set forth on pages 4 and 5 of the Petition for Writ of Certiorari.

The Respondents disagree with the statement of the Petitioners that there are two federal questions involved in this case. The Petitioners have attempted to create a second issue by reading into the decision of the Florida Supreme Court an equal protection of the laws question by virtue of a simple statement by the Florida Supreme Court limiting its decision in the case to the factual situation immediately before the Court. What the Florida Supreme Court would do involving a veteran of any war subsequent to World War II was not decided by the Florida Supreme Court. The record will show that there was no law argued or contained in any of the briefs upon which the Court could reasonably and accurately extend its decision beyond the scope of the present factual situation.

The purported second federal question set forth in the Petition for Writ of Certiorari is nothing more than an attempt to cloud the real issue involved in this case.

The only real federal question may be stated thusly:

> *Where a tax deed is valid under the laws of the State of Florida, does the Soldiers' and Sailors' Relief Act make this deed void or merely voidable?*

ARGUMENT

Section 194.02 of Florida law provides that any time after two years from issuance of a tax certificate, the purchaser of a tax certificate may apply for the issuance of

a tax deed. The Petitioners' attack on the validity of the tax deed is based on the provisions of Section 205 of the Soldiers' and Sailors' Civil Relief Act (50 USCA, Appendix 9, Section 525).

There is no statutory provision whatsoever in Florida which would invalidate this tax deed. If it is to be declared void, it must therefore be declared so on the basis of the provisions of the Soldiers' and Sailors' Civil Relief Act.

The question presented by this petition has already been answered by this Court adversely to the petitioners.

It is the Respondents' position (and this position was adopted by the Florida Supreme Court) that the case of *LeMaistre* v. *Leffers*, 333 U.S. 1, 92 L.Ed. 429, 68 S.Ct. 471, presented a factual situation almost identical to the case sub judice. (See Appendix—page A1) In the *LeMaistre* case, the tax certificate had been issued on August 5, 1940. LeMaistre entered the service on August 18, 1942, a period of more than two years after the issuance of the certificate. The tax deed was issued on March 1, 1943. LeMaistre was discharged from the Navy on December 18, 1945. This Court stated in the *LeMaistre* case as follows:

> "Under Florida law, Petitioner concededly could have redeemed any time between August 5, 1940, when the certificate was issued, and March 1, 1943, when the tax deed was issued. The provision of the Federal Act with which we are concerned became effective during that period—October 6, 1942. At that time Petitioner was in the Navy and at once became a beneficiary of it. That means that the running of the time granted him under Florida law to redeem was tolled as long as he was in the military service. Since he would have had from October 6, 1942 to March 1, 1943, to redeem, the effect of the Act was to give him the same length of time after his discharge for that pur-

pose. His present action being timely, there is thus no barrier to his recovery so far as the Act is concerned."

This Court was well aware of the provisions of the Florida statute at the time of the *LeMaistre* decision and this is demonstrated by the following language from Mr. Justice Douglas' opinion:

> "Petitioner owned land in Florida on which taxes became delinquent on April 1, 1940. Under Florida statutory procedure the tax collector after notice sells the land at public sale and issues a tax certificate to the purchaser. At any time after two years from the date of the certificate, the holder thereof may apply for a tax deed. Notice is given, a public sale is had, and a tax deed is issued. The owner may redeem the land at any time after the issuance of the certificate and before issuance of the tax deed."

This opinion leaves no doubt that this Court was apprised of all the provisions of the Florida law in effect at the time the tax deed in the *LeMaistre* case was issued.

In the *LeMaistre* case, this Court *did not* hold that the tax deed was prematurely issued and therefore void. It *did hold* that the tax deed was voidable provided the Petitioner brought his action to redeem within a period of time after his discharge equal to the period of time from the date of the Act to the date of the tax deed. LeMaistre brought a timely suit. The Petitioner in the case sub judice did not bring a timely action. The Respondents contend that the decision in the *LeMaistre* case set at rest the contentions now made by the Petitioners in the case sub judice.

The Court took the only practicable approach to the application of the Soldiers' and Sailors' Civil Relief Act to tax deeds. By holding the tax deed voidable, the Court extended protection to the returning serviceman for an

ample length of time to take action to redeem his property. By the same token, if the serviceman did not take the necessary steps to redeem, then his rights were cut off and the tax deed was valid.

The Petitioners' position is based on the confusion between those cases which under the Florida statute itself a tax deed is void, and the present situation where the tax deed is valid under Florida law but is affected by the Soldiers' and Sailors' Civil Relief Act.

The Florida Supreme Court is the final authority for the determination of the validity vel non of the tax deed under Florida law. The Florida Supreme Court has ruled that the tax deed under consideration here is valid according to Florida law. The validity of the tax deed under Florida law thus having been determined, the remaining question is the effect of the provisions of the Soldiers' and Sailors' Civil Relief Act upon an otherwise valid tax deed. The Florida Supreme Court in its decision in the case sub judice determined that the Soldiers' and Sailors' Civil Relief Act simply made this tax deed voidable.

This Court in the *LeMaistre* case has already squarely answered the question posed by Petitioners adversely to the Petitioners. The Petitioners had a period after the discharge of Moorman from the Armed Services of two years, seven months and twenty-nine days thereafter to redeem this property. The Petitioners took no action during that period and now some seventeen years later seek to recover this property by having this Court overrule its prior decision limiting his period of redemption.

The comparison of Section 205 and Section 500 of the "Relief Act" by this Court in the *LeMaistre* case lends added weight to the conclusion reached by the Florida Supreme Court. Section 500 provides in substance that if the

land of the serviceman is *improved* or *agriculture*, there can be *no* sale without leave of Court. Section 205 applies to *all* property and does not prohibit sale but gives additional time for redemption. This is the very vital distinction between the two sections as interpreted by this Court. The decision of the Florida Supreme Court recognizes this distinction.

To adopt the Petitioners' contention would in effect give greater effect to Section 205 by holding that it prohibits *any* sale.

This is not what the "Act" *says* and this is not what the *LeMaistre* opinion says the "Act" *means*. The tax deed in the case sub judice was voidable within the additional time allowed for redemption. The Petitioners chose not to pursue their rights within the allotted time.

The Respondents submit that there is no federal question of equal protection of the laws submitted by the decision of the Supreme Court of Florida in this case. A reading of the decision of the Florida Supreme Court does not support the Petitioners' contention that the ruling in this case discriminates against World War II veterans.

The Respondents further submit that the remaining federal question upon which the Petitioners rely in order to invoke the jurisdiction of this Court has already been answered by this Court in the *LeMaistre* case and this Petition for Writ of Certiorari should therefore be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by mail, this ..... day of ....., 1967, to David R. Lewis, Esquire, 730 American Heritage Life Building, Jacksonville, Florida, and Alex D. Littlefield, Jr., Esquire, 303 Caldwell Building, Tallahassee, Florida.

.....

Attorney